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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,692	12/10/2001	Michael Patrick Lyons	P 280456 702176 REG	9882
909	7590	03/22/2004	EXAMINER	
PILLSBURY WINTHROP, LLP			HAMILTON, ISAAC N	
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MCLEAN, VA 22102			ART UNIT	PAPER NUMBER
			3724	70

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/007,692	LYONS ET AL.
	Examiner	Art Unit
	Isaac N Hamilton	3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 February 2004.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4,6-14 and 18-24 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4,6-14,18-24 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Due to the Examiner's oversight of the rejection for claim 13, and upholding the Office's customer service initiative, applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6-12, 18-21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirsten in view of Wallis (4,774,865).

Regarding claims 1 and 18, note base 10; adjustable post 12; base-contacting surface juxtaposed base 10 and post 12; linear motion, first position and second position in a first direction in column3, lines 21-48; first force applying mechanism 15, 22; impacting post 12'; impact position and elevated position in second direction is inherent in an alligator shear, column 3, line 58; second force applying mechanism also inherent in alligator shear; force applying element 15; first force applying device 22; cutting axis in figure 3 is a vertical line between impacting post 12' and adjustable post 12.

Regarding claims 2 and 19, note flat upper surface juxtaposed between base 10 and post 12.

Regarding claim 3, note post 12 slides on base 10.

Regarding claims 4 and 20, note base-contacting surface is flat in figure 3 and slides horizontally on base 10.

Regarding claim 8, in an alligator shear it is inherent for the second force applying mechanism to be supported by the base.

Regarding claim 9, it is inherent in an alligator shear that the second force applying mechanism includes a pressure cylinder.

Regarding claims 10 and 11, note in figure 3 that the impacting post 12' moves vertically and the adjusting post moves horizontally.

Regarding claim 12, note first stop in figure 3. The top portion of base 10, which houses the force applying element 15 is the first stop.

Kirsten discloses everything as noted above, but does not disclose a pressure cylinder containing nitrogen. However, Wallis teaches pressure cylinder containing nitrogen 16. It would have been obvious to provide a pressure cylinder containing nitrogen in Kirsten as taught by Wallis in order to automate the force applying mechanism in Kirsten.

Regarding claims 7, 21, note first side on the right side of post 12 in figure 3, and second side on the left side of the post 12 in figure 3. Kirsten and Wallis disclose the claimed invention except for a second pressure cylinder. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second pressure cylinder, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. It would have been obvious to provide a second pressure cylinder in the combination of Kirsten and Wallis in order to have the ability to

move the adjustable post in the case that one of the pressure cylinders fails during manufacturing operations.

Regarding claim 23, column 3, line 23-25, in Kirsten recites that the screws are “projected or retracted” which is equivalent to “pushing and pulling”.

4. Claims 13 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirsten in view of Mori (5,671,647). Kirsten discloses everything as noted above, but does not disclose a second stop. However, Mori teaches second stop 15, 151. It would have been obvious to provide a second stop in Kirsten as taught by Mori in order to prevent the adjustable post from sliding off of the base. Note column 3, line 23-25, in Kirsten recites that the screws are “projected or retracted” which is equivalent to “pushing and pulling”.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kirsten and Wallis as applied to claim 1-4, 8-12, 18-21 and 23 above, and further in view of Graham (5,383,381). Kirsten discloses everything as noted above, but does not disclose a gib. However, Graham discloses gib 48. It would have been obvious to provide a gib in Kirsten as taught by Graham in order to prevent the adjustable post from sliding unevenly and jutting one end of the adjustable post into the path of the impacting post, thus creating damage to the adjustable post.

6. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kirsten and Wallis as described above and further in view of Mori (5,671,647). Kirsten and Wallis discloses everything as noted above, but does not disclose a second stop. However, Mori teaches second stop 15, 151. It would have been obvious to provide a second stop in Kirsten and Wallis as taught by Mori in order to the adjustable post from sliding off of the base. Also note, first side

on the right side of post 12 in figure 3, and second side on the left side of the post 12 in figure 3. Kirsten and Wallis disclose the claimed invention except for a second pressure cylinder. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second pressure cylinder, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. It would have been obvious to provide a second pressure cylinder in the combination of Kirsten and Wallis in order to have the ability to move the adjustable post in the case that one of the pressure cylinders fails during manufacturing operations.

7. Claims 1-4, 8-12, 18-21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirsten in view of Wallis and Chazen (3,645,159).

Regarding claims 1 and 18, note base 10; adjustable post 12; base-contacting surface juxtaposed base 10 and post 12; linear motion, first position and second position in a first direction in column3, lines 21-48; first force applying mechanism 15, 22; impacting post 12'; second force applying mechanism also inherent in alligator shear; force applying element 15; first force applying device 22; cutting axis in figure 3 is a vertical line between impacting post 12' and adjustable post 12.

Kirsten discloses everything as noted above, but does not disclose an impact position and does not disclose an elevated position. However, Chazen discloses an alligator shear that teaches impact position and elevated position in figure 1. It would have been obvious to provide an impact position and an elevated position in Kirsten as taught by Chazen in order to duplicate the motion required in an alligator shear.

Regarding claims 2 and 19, note flat upper surface juxtaposed between base 10 and post 12.

Regarding claim 3, note post 12 slides on base 10.

Regarding claims 4 and 20, note base-contacting surface is flat in figure 3 and slides horizontally on base 10.

Regarding claims 8 and 9, note second force applying mechanism in column 2, lines 27, 28 in Chazen.

Regarding claims 10 and 11, note in figure 3 that the impacting post 12' moves vertically and the adjusting post moves horizontally.

Regarding claim 12, note first stop in figure 3. The top portion of base 10, which houses the force applying element 15 is the first stop.

The combination discloses everything as noted above, but does not disclose a pressure cylinder containing nitrogen. However, Wallis teaches pressure cylinder containing nitrogen 16. It would have been obvious to provide a pressure cylinder containing nitrogen in the combination as taught by Wallis in order to automate the force applying mechanism in Kirsten.

Regarding claims 7 and 21, note first side on the right side of post 12 in figure 3, and second side on the left side of the post 12 in figure 3. The combination and Wallis disclose the claimed invention except for a second pressure cylinder. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second pressure cylinder, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. It would have been obvious to provide a second pressure cylinder in the combination of Kirsten and

Wallis in order to have the ability to move the adjustable post in the case that one of the pressure cylinders fails during manufacturing operations.

Regarding claim 23, column 3, line 23-25, in Kirsten recites that the screws are “projected or retracted” which is equivalent to “pushing and pulling”.

8. Claims 13 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kirsten and Chazen as applied to claims 1-4, 8-12, 18-21 and 23 above, and further in view of Mori (5,671,647). The combination discloses everything as noted above, but does not disclose a second stop. However, Mori teaches second stop 15, 151. It would have been obvious to provide a second stop in the combination as taught by Mori in order to prevent the adjustable post from sliding off of the base. Note column 3, line 23-25, in Kirsten recites that the screws are “projected or retracted” which is equivalent to “pushing and pulling”.

9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kirsten, Wallis and Chazen as applied to claims 1-4, 8-12, 18-21 and 23 above, and further in view of Graham (5,383,381). The combination discloses everything as noted above, but does not disclose a gib. However, Graham discloses gib 48. It would have been obvious to provide a gib in the combination as taught by Graham in order to prevent the adjustable post from sliding unevenly and jutting one end of the adjustable post into the path of the impacting post, thus creating damage to the adjustable post.

10. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kirsten, Wallis and Chazen as applied to claims 1-4, 8-12, 18-21 and 23 above, and further in view of Mori (5,671,647). The combination discloses everything as noted above, but does not disclose a second stop. However, Mori teaches second stop 15, 151. It would have been obvious

to provide a second stop in the combination as taught by Mori in order to prevent the adjustable post from sliding off of the base.

***Response to Arguments***

Applicant's arguments filed 02-20-2004 have been fully considered but they are not persuasive. Applicant asserts that the nuts 22 do not move the screws 15 and cannot be construed as force applying means. It is believed that the nuts 22 do move the screws 15 and are construed as force applying means. It is noted that the screws are turned at element 21 with a wrench, however, the screws 15 would not be able to move without the normal forces provided by the interaction with the threads on the nuts 22. Without the force applied by the nuts 22 the screws 15 would simply spin and not move anywhere. The nuts 22 apply a force which causes the screws 15 to move. Applicant asserts that it would not have been obvious to provide a pressure cylinder to replace the nuts 22 and screws 15. It is believed that since 1930, which is the year Kirsten filed, many advances in technology have occurred. Replacing the old system of screws and nuts with automated technology, such as pressure cylinders, is well known and provides for automated systems which no longer require an operator to turn the screw 15 with a wrench. Applicant asserts that figure 2 in Wallis does not show a locked position during cutting. It is believed that in figure 2 Wallis shows that the piston is in a locked upper position. It is also believed that Kirsten discloses movement of the adjustable post only during times between cuts, and not during cutting. Applicant asserts that adding a pressure cylinder to a different side of adjustable post is not a duplication of parts. It is believed that adding a pressure cylinder to the other side of the adjustable post would provide back-up systems for the original pressure cylinder

should it fail. Adding the pressure cylinder to the other side of the post would be a duplication of parts because it would be performing the same function of moving the post in a horizontal direction. It is also believed that the pressure cylinder is capable of being added to the structure with out interfering with any of the other mechanisms of the system, such as the knife.

Applicant asserts that reliance upon Mori for providing a second stop is improper. It is believed that it would have been obvious to provide the second stop in Kirsten as taught by Mori in order to prevent the post from sliding off of the base. Mori teaches this in column 3, lines 63-65. If the post were to slide off of the base and the impacting post was actuated, then the post would not have a normal force as provided by the base to create the shearing of a material, and further, could cause the screw 15 to be bent. It is to be further noted that although adjustable post 12 in Kirsten is the stationary knife in the alligator shear assembly, it is also a moving knife because it is adjustable; therefore, any stopping mechanism for a moving knife is appropriate for the stationary knife in Kirsten.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kuchyt, Pearson and Von Arx are cited for similar structure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 703-305-4949. The examiner can normally be reached on Monday thru Friday between 8am and 5pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

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IH  
March 19, 2004

  
Boyer Ashley  
PRIMARY EXAMINER